

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CHRISTOPHER CASTORINA and STEVEN MORSE,

Plaintiffs,

v.

SPIKE CABLE NETWORKS, INC., NETWORK  
ENTERPRISES, MTV NETWORKS, VIACOM, INC.,  
INDUSTRY ENTERTAINMENT, CBS CORPORATION,  
ABC CORPORATIONS, 1-10 fictitious (corporations);  
XYZ CORPORATIONS, 1-10 (fictitious corporations);  
ABC TALENT AGENCIES (fictitious agencies);  
XYZ TALENT AGENCIES, 1-10 (fictitious agencies);  
TALENT AGENTS JOHN DOES 1-10 (fictitious agents);  
TALENT AGENTS JANE DOES 1-10, (fictitious agents).

Defendants.  
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Civil Case No:

**2:10-CV-02954-JS –ARL**

**DECLARATION OF ELIZABETH A. McNAMARA**

I, Elizabeth A. McNamara, declare:

1. I am a partner in Davis Wright Tremaine LLP, counsel for Defendants Spike Cable Networks, Inc., MTV Networks, Network Enterprises, CBS Corporation, and Viacom Inc. (collectively, “Spike” or “Defendants”).

2. I make this declaration in support of the Defendants’ motion to dismiss the Complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Motion”). This declaration annexes certain exhibits which are documents specifically identified in the Complaint and/or incorporated in or otherwise integral to the Complaint. It also provides certain background information which is not material to the resolution of the Motion.

**Exhibits**

3. Attached as Exhibit A is a true and correct copy of the plaintiffs’ Treatment for their proposed reality television series “Two Left Feet: A Sports Reality Show,” which is identified and described in the Complaint.

4. Spike TV, a channel of defendant MTV Networks, which is a subsidiary of Viacom Inc, produces the one-hour reality sports show *Pros vs. Joes*, which originally aired on March 6, 2006. (Defendant Network Enterprises, Inc. is a wholly owned subsidiary of MTV Networks.) Since then, Spike has aired four seasons of the show and the fifth season is currently being aired (forty-six episodes in all).

5. Because each episode of *Pros v. Joes* is relatively similar in structure and substance, true and correct copies of representative samples of episodes from *Pros vs. Joes* are annexed to my affidavit, including any episode that is specifically identified in the Complaint. If the Court believes that it is necessary to review other episodes of *Pros v. Joes*, Defendants are able to provide the Court with DVDs of all other episodes of the show's five seasons.

6. Attached as Exhibit B are true and correct copies of representative episodes of the first season of *Pros vs. Joes*; specifically, episodes 101, 102, 103, 104, and 110.

7. Attached as Exhibit C are true and correct copies of representative episodes of the second season of *Pros vs. Joes*; specifically, episodes 201, 205, and 210.

8. Attached as Exhibit D are true and correct copies of representative episodes of the third season of *Pros vs. Joes*; specifically, episodes 301, 305 and 310.

9. Attached as Exhibit E are true and correct copies of representative episodes of the fourth season of *Pros vs. Joes*; specifically, episodes 401, 405 and 408.

10. Attached as Exhibit F are true and correct copies of representative episodes of the fifth season of *Pros vs. Joes*; specifically, episodes 501, 505 and 508.

### **Parties**

11. The Spike Defendants have no affiliation with, or knowledge of, Defendant Industry Entertainment.

12. CBS played absolutely no part in the development, production or distribution of

*Pros vs. Joes*. Attached hereto as Exhibit G is a true and correct copy of the news article, "Viacom Makes Split Official", by J. Arak, CBS News (June 14, 2005), available at <http://www.cbsnews.com/stories/2005/06/14/national/main701875.shtml>, which sets forth how Viacom Inc., the media conglomerate that owns CBS and MTV, split the company into two separate entities, one focusing on broadcast television and the other on cable networks, and this split was made official in the first quarter of 2006, before *Pros vs. Joes* originally aired.

**Procedural History and Copies of Decisions**

13. Plaintiffs originally asserted their claim back in 2007 in a series of letters and phone calls. Attached as Exhibit H is a true and correct copy of my letter to plaintiff Steven Morse, dated April 24, 2007.

14. More than three years later, plaintiffs commenced this action on June 28, 2010. Defendants promptly provided plaintiffs' counsel with a detailed explanation of the facts and the law, establishing that their copyright claim was without merit. Attached as Exhibit I is a true and correct copy of my letter to Donna D. Maio, Esq., counsel for plaintiffs, dated July 9, 2010.

15. As of this date, the parties have not engaged in any discovery in this action.

16. Attached hereto as Exhibit J is a true and correct copy of the New Jersey District Court's decision in *Pino v. Viacom Inc.*, No. 07-3313 (AET), 2008 WL 704356 (D.N.J. March 4, 2008).

17. For the court's convenience, attached hereto as Exhibit K are true and correct copies of all unpublished decisions that are only available on Westlaw and/or Lexis that are cited in Defendants' Motion.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 3rd day of September, 2010, at New York, New York.

/s/ Elizabeth A. McNamara  
Elizabeth A. McNamara